APPENDIX A.

Opinion.

In the United States Court of Appeals for the Ninth Circuit.

Golden State Transit Corporation, etc. Plaintiff/Appellee, vs. City of Los Angeles, Defendant/Appellant. No. 81-5369 D.C. NO. 81-1519.

Filed: September 7, 1982.

Appeal from the United States District Court for the Central District of California. A. Andrew Hauk, District Judge, Presiding, Argued and Submitted May 7, 1982.

Before: Anderson, Skopil and Canby, Circuit Judges. Canby, Circuit Judge.

The City of Los Angeles (City) appeals from the district court's grant of a preliminary injunction enjoining the City from allowing the taxicab franchise of Golden State Transit Corporation d/b/a Yellow Cab of Los Angeles (Yellow Cab) to terminate or from treating the franchise as if it had expired. *See Golden State Transit Corp. v. City of Los Angeles*, 520 F. Supp. 191 (C.D. Cal. 1981). Yellow Cab alleged that the City's refusal to grant a renewal of Yellow Cab's taxicab franchise constituted unlawful interference with the ongoing collective bargaining between Yellow Cab and Teamsters Local No. 572 and deprived Yellow Cab of due process and equal protection of the law in violation of 42 U.S.C. §1983. We agree with the district court's conclusion, 520 F. Supp. at 193, that the balance of hardships in this case tips sharply in Yellow Cab's favor. Nonetheless, since Yellow Cab does not have a fair chance of success on the merits, *see Benda v. Grand Lodge of International Ass'n of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978), *cert. dismissed*, 441 U.S. 937 (1979), we conclude that the district court abused its discretion in

granting the preliminary injunction. Accordingly, we vacate the preliminary injunction.

Unlawful Interference in a Labor Dispute

The City contends that its actions did not constitute an impermissible interference in a labor dispute because (1) such interference was not the purpose behind its actions and (2) federal labor law does not preempt the City from exercising its authority to deny renewal of a taxicab franchise. We conclude that Yellow Cab has little chance of making the requisite showing that Congress intended to bar a city from refusing to renew the taxicab franchise of a company engaged in a collective bargaining dispute with its drivers. Thus, with respect to the preemption issue, Yellow Cab has failed to satisfy the "serious question" requirement for issuance of a preliminary injunction. *See id.* at 314-15.

The district court found that "the City's true purpose in declining to renew plaintiff's [Yellow Cab's] franchise" as "substantively to influence the economic (as opposed to political) weapons of Yellow Cab and its Teamster drivers in their labor negotiation efforts, by diminishing the economic power of the drivers." Excerpt of Record at 116. Courts, however, are not permitted to inquire into alleged motives of legislators. Rather, they must look to the effects of the legislative acts. *Daniel v. Family Security Life Insurance Co.*, 336 U.S. 220, 224 (1949); *see United States v. Des Moines Navigation & Railway Co.*, 142 U.S. 510, 544-45 (1892). The district court did determine that one *effect* of the denial of Yellow Cab's franchise renewal was to alter the balance of power in the collective bargaining dispute in favor of the union. *See* 520 F. Supp. at 194. That determination is not clearly erroneous. *See* Fed. R. Civ. P. 52(a). There is ample evidence in the record to support a finding that by threatening to deny and ultimately denying

renewal of Yellow Cab's franchise, the city deprived Yellow Cab of an economic weapon — the opportunity simply to outlast the strikers.

In view of the effect of the city's actions upon the ongoing labor dispute, we must consider whether the National Labor Relations Act, as amended, 29 U.S.C. §§151-168, preempted the City's power to deny Yellow Cab's application for renewal of its franchise. Federal labor legislation seeks to strike a balance between the power of labor and management by protecting certain activities, *see* 29 U.S.C. §157, prohibiting certain practices, *see id.* §158, and leaving other conduct "unregulated because left 'to be controlled by the free play of economic forces.' " *Lodge 76, International Ass'n of Machinists & Aerospace Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 140 (1976) (*quoting NLRB v. Nash-Finch Co.*, 404 U.S. 138, 144 (1971)); *accord, New York Telephone Co. v. New York State Dep't of Labor*, 440 U.S. 519, 531 (1979) (plurality opinion); *Local 20, Teamsters, Chauffeurs & Helpers Union v. Morton*, 377 U.S. 252, 259-60 (1964). Yellow Cab contends that the actions of the City fall within the last of these three categories and therefore are preempted by federal law. The Supreme Court, however, has clearly stated that where interests "deeply rooted in local feeling and responsibility" are affected, we may not lightly infer that Congress intended to deprive state and local governments of the power to act. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244 (1959), *quoted with approval in Lodge 76*, 427 U.S. at 136. In such an instance, a finding of preemption must rest upon "compelling congressional direction." *San Diego Building Trades Council*, 359 U.S. at 244.

The use of streets and highways is a "traditionally local matter" left to state and local regulation under the police power. *Allen-Bradley Local No. 1111 v. Wisconsin Em-*

ployment Relations Board, 315 U.S. 740, 749 (1942), *quoted in Lodge 76*, 427 U.S. at 136 n.2. Yellow Cab has not brought to our attention nor have we found any evidence that might rise to the level of a "compelling congressional direction" to deprive a local government of the power to deny a franchise renewal to a franchisee involved in a labor dispute. We therefore conclude that Yellow Cab has little chance of prevailing on the merits of the preemption question. *See Benda*, 584 F.2d at 315.

Due Process

The City contends that Yellow Cab has no constitutionally protected property interest in a franchise renewal and, therefore, denial of Yellow Cab's application for a franchise renewal did not deprive Yellow Cab of procedural due process. We agree.

The requirements of procedural due process apply only to deprivations of a constitutionally protected liberty or property interest. *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). "A property interest in a benefit protected by the due process clause results from a legitimate claim of entitlement created and defined by an independent source, such as state or federal law." *Russell v. Landrieu*, 621 F.2d 1037, 1040 (9th Cir. 1980). Yellow Cab has failed to bring to our attention any state law or city ordinance that creates an expectation of entitlement to a franchise renewal. The relevant provision of the Los Angeles City Charter provides in part: "The City *may*, by ordinance, . . . grant to the holder of such franchise a new franchise to replace such franchise about to expire." Los Angeles City Charter, §3, subdiv. 8(D); Excerpt of Record at 4 (emphasis added). The wording of the statute is permissive, not mandatory, thus conferring on the City discretion to deny franchises to applicants even if they meet any established eligibility re-

quirements. *See Erdelyi v. O'Brien*, 680 F.2d 61, 63 (9th Cir. 1982); *Jacobson v. Hannifin*, 627 F.2d 177, 180 (9th Cir. 1980). Moreover, Yellow Cab has not referred us to a set of standards defining eligibility for renewal. *Cf. Board of Regents v. Roth*, 408 U.S. at 566-67 (absent statutory or administrative standards defining eligibility for reemployment, decision whether to rehire a nontenured teacher is left to unfettered discretion of state university officials). Yellow Cab does not assert that the terms of the original franchise secure a property interest in renewal. Nor has Yellow Cab alleged the existence of rules and understandings promulgated and fostered by city officials that might justify a legal entitlement. *See Perry v. Sindermann*, 408 U.S. 593, 602-03 (1972) (policies and practices may establish legitimate claim of entitlement). The recommendation by various city committees that Yellow Cab's franchise be renewed does not rise to the level of a de facto guarantee of renewal equivalent to the de facto tenure system alleged in *Perry v. Sindermann*. At most, Yellow Cab had only a unilateral hope for renewal. *Geriatrics, Inc. v. Harris*, 640 F.2d 262 (10th Cir. 1981), *cert. denied*, 102 S.Ct. 129. Nor is the interest asserted by Yellow Cab so fundamental as to warrant protection aside from state and local law or practice. *See Jacobson v. Hannifin*, 627 F.2d at 180.

In sum, Yellow Cab has failed to raise a serious question with respect to the threshold issue in a procedural due process claim — whether the claimant has a constitutionally protected liberty or property interest.

Equal Protection

The City next argues that its actions did not violate the Equal Protection Clause because they furthered legitimate governmental interests, namely provision of quality taxicab service and adequate compensation for taxicab drivers. Yel-

low Cab asserts that the sole purpose behind the differential treatment of Yellow Cab vis-a-vis the other applicants was the City's desire to coerce Yellow Cab into yielding to union demands. We conclude that Yellow Cab does not have a fair chance of demonstrating that the alleged classification is not rationally related to a legitimate governmental purpose.

In reviewing a state statute or local ordinance under the Equal Protection Clause, courts generally presume that the legislative act is valid. *Parham v. Hughes*, 441 U.S. 347, 351 (1979). Where neither a fundamental right nor a suspect class is implicated, legislative classifications are constitutional if they bear some rational relationship to a permissible governmental objective. *Id.*; *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 663 (9th Cir. 1977). The burden is on the party challenging the legislative judgment to convince the court that there is no set of facts that may reasonably be conceived to justify the classification. *Vance v. Bradley*, 440 U.S. 93, 111 (1979); *Lamb v. Scripps College*, 627 F.2d 1015, 1021 & n.9 (9th Cir. 1980).

The City, in acting on the 12 applications for franchise renewals created a classification that differentiated between the one applicant engaged in a collective bargaining dispute and the remaining applicants not involved in such a dispute. Even assuming that the members of the council were motivated at least in part by an impermissible purpose, that classification still survives judicial scrutiny. It is well settled that a reviewing court "will not strike down an otherwise constitutional statute on the basis of an allegedly illicit legislative motive." *United States v. O'Brien*, 391 U.S. 367, 383 (1968); *accord, Kalish v. United States*, 411 F.2d 606, 607 (9th Cir.), *cert. denied*, 396 U.S. 835 (1969). The classification is valid if some legitimate state interest is advanced. The reviewing court need not and should not

ascertain whether the particular governmental interest was the primary legislative purpose. *McGinnis v. Royster*, 410 U.S. 263, 276-77 (1973). The City has advanced as the permissible governmental purposes behind its actions both the provision of quality taxicab service and the assurance of adequate compensation for taxicab drivers. Although these interests were not asserted until after the differential treatment of Yellow Cab had commenced, the "courts may properly look beyond the articulated state interest at the time of enactment in testing a statute under the rational basis test." *Lamb v. Scripps College*, 627 F.2d at 1021 n.9.

We conclude that Yellow Cab has not met, and has little chance of meeting, its burden of establishing that no set of facts may reasonably be conceived to justify the classification. *See Vance v. Bradley*, 440 U.S. at 111; *Lamb v. Scripps College*, 627 F.2d at 1021 & n.9. The City could have rationally determined that denying Yellow Cab's application for renewal of its franchise would cause or contribute to higher levels of taxicab service and increased compensation for taxicab drivers.

The district court's grant of a preliminary injunction is vacated.

APPENDIX B.

Findings of Fact.

United States District Court Central District of California.

Golden State Transit Corporation, a California corporation, doing business as Yellow Cab of Los Angeles, Plaintiff, City of Los Angeles, a municipal corporation, Defendant. No. 81 1519 AAH.

Filed: April 13, 1981.

Plaintiff's Application for Preliminary Injunction having come on for hearing April 13, 1981 before this court. The parties have presented a substantial record. After consideration of the evidence and argument of counsel, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff Golden Transit Corporation is a California corporation doing business as Yellow Cab of Los Angeles ("Yellow Cab") with its principal place of business in the City of Los Angeles.

2. Defendant City of Los Angeles ("City") is a chartered city organized and existing under the laws of the State of California.

3. In 1977, plaintiff's predecessor was in receivership. Plaintiff was assured by several persons, including at least one responsible City official, that taxicab franchise renewal was automatic and that no Los Angeles taxicab franchise had failed to be renewed. In reliance upon these representations, plaintiff purchased the assets of its predecessor and obtained City Council approval of transfer of the franchise.

4. Since 1977, Yellow Cab has operated as the largest taxicab company in Los Angeles pursuant to a City franchise which was due to expire October 29, 1980. Twelve other City taxicab franchises were due to expire on that same

date. The expiration dates of all of the franchises were extended to March 31, 1981.

5. On March 30, 1981, this court granted an application of Yellow Cab for issuance of a temporary restraining order prohibiting the City from allowing its franchise to expire.

6. Yellow Cab operated pursuant to a collective bargaining agreement with its Teamster drivers. The agreement expired in October, 1980, but was renewed by interim agreements which finally expired February 11, 1981.

7. On that same date, February 11, 1981, the Los Angeles City Council was scheduled to and did meet to consider whether to renew franchises of Yellow Cab and twelve other franchises. That same day, Yellow Cab's drivers went out, and remain, on strike. A dispute exists between Yellow Cab and its drivers regarding wages and benefits.

8. Until the strike, Yellow Cab was engaged in extensive business operations in the City of Los Angeles and at Los Angeles International Airport, and train and bus terminals, transporting passengers who were arriving from or were departing to the various states and other countries, thereby affecting interstate commerce.

9. Yellow Cab and the other franchise holders had all made timely application for renewals of their franchises. The City's Department of Transportation made a report to the City's Board of Transportation stating that plaintiff was in full compliance with all terms and conditions of its franchise, recommending long-term renewal. On September 4, 1980, and again on January 26, 1981, defendant's Board of Transportation Commissioners recommended long-term renewal of the Yellow Cab franchise to the City Council Committee on Transportation and Traffic.

10. On November 19, 1980, the City's Committee on Transportation and Traffic recommended to the full City

Council that a long-term renewal franchise be granted to Yellow Cab and certain other franchisees.

11. On February 5, 1981, the Joint Council of Teamsters sent letter to the Mayor and all City Council members advising them of the existence of a labor dispute between plaintiff and the Teamsters.

12. On February 11, 1981, the City Council met to consider whether to grant taxicab franchises to the thirteen applicants. It considered a report of its Transportation and Traffic Committee dated February 2, 1981 ("Report"). The Report recommended, *inter alia*, renewal franchises for four years for six franchisees, including Yellow Cab, and for one year for seven franchisees.

13. The Report also found that the six companies recommended for full-term franchises were "in compliance with all terms and conditions of their franchise, including these five conditions (a) payment of their franchise fees; (b) compliance with all rules regarding leasing/contracting operations: (c) furnish waybills and dispatch records; (d) maintain minimum number of vehicles required by franchise; and (e) compliance with Affirmative Action provisions of franchise."

14. A representative of the Teamsters appeared at the Council meeting and extensively detailed the dispute between Yellow Cab and its drivers, and recommended that Yellow Cab not receive a full franchise because of the labor dispute.

15. Thereupon, the City Council granted the recommended full-term franchises to the five other companies, but postponed consideration of Yellow Cab to February 17, 1981. The Council did, however, adopt its Committee's Report, finding that Yellow Cab and the other five com-

panies were in full compliance with all terms and conditions of their franchises.

16. On February 17, 1981, the City Council considered whether to grant Yellow Cab a full-term four-year franchise. The Teamsters appeared and opposed the full-term grant because of Yellow Cab's labor difficulties. Thereupon, the Council granted a franchise extension only until April 30, 1981, provided that the City Council found before March 27, 1981, that the 30-day extension ordinance was "in the best interests" of the City. No other franchise grant was subject to this condition.

17. On February 17, 1981, the Teamsters told Yellow Cab that if the labor dispute was not settled, Yellow Cab was "going to have a lot of trouble" renewing the franchise.

18. On March 22, 1981, the Teamsters told Yellow Cab that the Teamsters were going to see that the Yellow Cab franchise was not going to be renewed unless union demands were met.

19. On March 23, 1981, the City Council met to consider whether it was in the "best interest" of the City to allow Yellow Cab the one month extension of its franchise. The City Council invited parties to "express their views." Yellow Cab urged the Council to grant the extension to avoid intervening in the labor dispute. The Teamsters urged denial of the extension because, they contended, Yellow Cab was bargaining "in bad faith" with the drivers and that to grant a further extension would not be in the drivers' best interests.

20. The Teamster representation recited to the Council the purported "modest" demands labor was making on Yellow Cab and Yellow Cab's purported intransigence. He reported that the striking workers had voted, with only one dissent, "to endorse the position that the franchise not be

extended . . ." He said he hoped that present Yellow Cab employees "would be hired by whatever successor is established" for Yellow Cab.

21. The AFL-CIO representative, representing the "brothers and sisters" of the Teamsters, reminded the Council that there are 700,000 union members in the County, claimed that Yellow Cab was acting in "bad faith," and urged denial of the franchise.

22. A municipal election is scheduled for Los Angeles on April 14, 1981 wherein numerous members of the City Council and the Mayor are standing for reelection.

23. The President of the Council stated that "it will be very difficult to get this ordinance passed to extend this franchise if the labor dispute is not settled by the end of the week . . ." and that "both sides should realize that [if] it is not done by the end of this week, that there is a very good possibility that there will not be a . . . franchise for Yellow Cab, it will lapse, it will be open to . . . other companies."

24. Thereupon, the Council voted to defeat the motion which recommended that the Council find that it would be in the best interests of the City to extend the franchise. Yellow Cab was thereby denied even a thirty-day extension of its franchise.

25. At no point in the franchise renewal proceedings was plaintiff notified that any evidentiary or fact finding hearing would be held to determine whether the franchise should be renewed. Plaintiff was never offered an opportunity to present sworn testimony, to offer admissible evidence, or to cross-examine opposing parties under oath. The only factual findings adduced were that plaintiff was in full compliance with all the terms of its franchise.

26. Under the terms of its Charter, the City was required to have adopted an ordinance of general application establishing the procedural standards for granting an individual renewal franchise. There are no established procedural standards for renewal of taxicab franchises which Yellow Cab has failed to meet.

27. Unless the court grants the preliminary injunction requested, the status quo will change radically. Plaintiff's taxicab franchise will expire. Plaintiff's lawful right to bargain with the Teamsters will be rendered moot. Plaintiff's business will be destroyed.

28. The City has attempted substantively to influence the economic (as opposed to political) weapons of Yellow Cab and its Teamster drivers in their labor negotiation efforts, by diminishing the economic power of Yellow Cab, and increasing the economic power of the drivers. This was the City's true purpose in declining to renew plaintiff's franchise.

29. Any finding of fact which may be deemed a conclusion of law is incorporated into the Conclusion of Law section below, and any conclusion of law which may be deemed a finding of fact is incorporated in this Finding of Fact section.

CONCLUSIONS OF LAW.

30. This court has jurisdiction of this action under 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343 in that it arises under the Supremacy Clause of the Constitution of the United States, Article VI, Clause 2 and the Fourteenth Amendment to the Constitution, under the National Labor Relations Act, 29 U.S.C. Sections 151-68 et seq., under the Labor Management Relations Act, 29 U.S.C. Sections 141-67 and 171-97, and the Civil Rights Act, 42 U.S.C.

Sections 1983, 1985 and 1986. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

31. Plaintiff has raised serious questions, including but not limited to whether the conduct of the City violates the Supremacy Clause and Fourteenth Amendment due process and equal protection clauses of the United States Constitution, the National Labor Relations Act, the Labor Management Relations Act and the Civil Rights Act (42 U.S.C. Section 1983).

32. The actions of the City herein were and now are under color of law.

33. Denial of rights conferred by federal statute are actionable under 42 U.S.C. Section 1983. There is no necessity of a constitutional violation. *Maine v. Thiboutot* 100 S.Ct. 2502, 65 L.Ed.2d 555, ___ U.S. ___ (1980), 48 USLW 4859.

34. At a minimum, due process requires that the City could not deny the application for franchise renewal arbitrarily, capriciously, unreasonably or with no factual basis sufficient to justify the denial.

35. The City's refusal to grant Yellow Cab even a thirty-day extension, much less a four-year renewal, of its franchise by imposing a "special" requirement that the Council found it to be in the "best interest" of the City, while granting all twelve other franchise applications with no such "special" requirement, denied Yellow Cab, under color of law, of equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

36. The City's insistence, under color of law, that Yellow Cab reach an agreement with its Teamster drivers as a condition precedent to franchise extension constituted an unlawful attempt by the State, through its chartered City, to influence the conduct of parties to collective bargaining

negotiations [*Lodge 76, Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976)].

37. The City's actions, under color of law, further violated Yellow Cab's rights, codified in 28 U.S.C. Section 158(d) not to be compelled to agree to a proposal or make concessions to the Teamsters and Yellow Cab's right, codified in 28 U.S.C. Section 158(e) to be free of a secondary boycott, all in violation of 42 U.S.C. Section 1983.

38. The public policy favoring competition, as embodied in the Sherman Antitrust Act (15 U.S.C. Sections 1 and 2) would be served by granting the injunction prayed for.

39. In order to issue a preliminary injunctions, three alternative tests are applied:

TEST 1: (1) Has plaintiff shown a probability of success on the merits and

(2) Has plaintiff shown the possibility of irreparable injury?

or

TEST 2: (3) Are serious questions raised? and

(4) Does the balance of hardships tip sharply in plaintiff's favor?

Wm. Inglis & Sons Baking Co. v. ITT Cont. Baking Co. (9th Cir., 1975) 526 F.2d 86, 88.

or

TEST 3: (5) Has plaintiff established a strong likelihood of success on the merits?

(6) Does the balance of irreparable harm favor plaintiff? and

(7) Does the public interest favor granting the injunction?

Sierra Club v. Hathaway (9th Cir., 1978) 579 F.2d 1162, 1167.

40. Plaintiff has shown a strong likelihood of success on the merits.

41. Plaintiff has shown an absolute certainty of irreparable injury if a preliminary does not issue.

42. Plaintiff has raised serious questions going to the merits of the dispute.

43. The balance of hardships and irreparable harm tips sharply in plaintiff's favor.

44. The public interest favors granting the injunction.

/s/ A. Andrew Hauk
A. Andrew Hauk

APPENDIX C.

Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

APPENDIX D.

Section 1. Equal protection of the laws

* * * nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX E.

Section 1. Due process of law

* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *